To: Dynamic Sports Nutrition, LLC (mail@egbertlawoffices.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85280036 - D-ANABOL 25 -

2259-21

Sent: 5/1/2012 12:49:02 PM

Sent As: ECOM116@USPTO.GOV

Attachments: Attachment - 1

Attachment - 2

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Attachment - 22

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85280036

MARK: D-ANABOL 25

85280036

CORRESPONDENT ADDRESS:

JOHN S. EGBERT

EGBERT LAW OFFICES, PLLC

412 MAIN ST FL 7

HOUSTON, TX 77002-1897

CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Dynamic Sports Nutrition, LLC

CORRESPONDENT'S REFERENCE/DOCKET

NO:

2259-21

CORRESPONDENT E-MAIL ADDRESS:

mail@egbertlawoffices.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 5/1/2012

THIS IS A FINAL ACTION.

This letter responds to the applicant's correspondence dated April 10, 2012.

The applicant's disclaimer statement is accepted and made part of the record.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

For the reasons set forth below, the refusal under Trademark Act Section 2(d) is now made FINAL with respect to U.S. Registration No. 3378354. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.64(a).

--General Principles in Determining Likelihood of Confusion

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361-62, 177 USPQ 563, 567 (C.C.P.A. 1973); *In re 1st USA Realty Prof'ls Inc.*, 84 USPQ2d 1581, 1584 (TTAB 2007); *see also In re Dixie Rests. Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). The marks are compared for similarities in their appearance, sound, connotation and commercial impression. TMEP §§1207.01, 1207.01(b). The goods are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001); TMEP §§1207.01, 1207.01(a)(vi).

--Similarities Between the Goods

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A.

1975); TMEP §1207.01(a)(i). Rather, it is sufficient to show that because of the conditions surrounding their marketing, or because they are otherwise related in some manner, the goods would be encountered by the same consumers under circumstances such that offering the goods under confusingly similar marks would lead to the mistaken belief that they come from, or are in some way associated with, the same source. *In re Iolo Techs.*, *LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *see In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984); TMEP §1207.01(a)(i).

In this case, the applicant's goods identified as "Dietary and nutritional supplements" are the same as, encompass, or are substantially similar to, the registrant's goods identified as "Dietary supplements, excluding anobolic steroids."

Online product related literature and/or advertisements for both the registrant's product and the applicant's product indicate that they are both used for increasing muscle mass and strength. (See attachments).

Online literature and/or advertisements for the applicant's product demonstrate that the applicant's and registrant's goods are: (1) marketed through the same channels; (2) directed to the same potential customers; and (3) even promoted as comparable competing products wherein they provide, in part, "If you are **looking to buy Dianabol** ... online, our **D-anabol 25** is exactly what you need." (See attachments).

In situations such as this where the goods of the respective parties are nearly identical or "similar in kind and/or closely related," the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

--Similarities Between the Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

The marks are compared in their entireties under a Trademark Act Section 2(d) analysis. *See* TMEP §1207.01(b). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression; greater weight is given to that dominant feature in determining whether the marks are confusingly similar. *See In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); TMEP §1207.01(b)(viii), (c)(ii).

Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. Disclaimed matter is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii).

The applicant applied to register the mark D-ANABOL 25, with 25 disclaimed. The registered mark is DIANABOL.

In this case, the dominant feature of the applicant's mark is D-ANABOL.

The dominant feature of the applicant's mark is nearly identical in appearance to the registrant's mark. The letter I is merely replaced with a hyphen.

The dominant feature of the applicant's mark is phonetically identical to the registrant's mark. Similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv).

The additional of the descriptive number 25 does not obviate the similarities between the dominant feature of the applicant's mark and the registrant's mark. That is, the addition of the number 25 would be perceived as the milligram dosage of the goods and adds little or nothing to the trademark significance of the applicant's mark.

When the marks are compared in their entireties, they create the same overall commercial impression. The question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 201, 175 USPQ 558, 558-59 (C.C.P.A. 1972); TMEP §1207.01(b). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *See Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329-30, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Visual Info. Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179, 189 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537, 540-41 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

--Conclusion

Where the goods are the same or substantially similar, marketed through the same channels to the same potential customers, and the marks create the same overall commercial impression, confusion as to the source of the goods is likely. For the foregoing reasons, the refusal to register the mark under Section 2(d) of the Trademark Act is maintained and made final.

GUIDELINES FOR RESPONDING TO A FINAL REFUSAL

If applicant does not respond within six months of the date of issuance of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

- (1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or
- (2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to

review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

/John Dwyer/ Examining Attorney Law Office 116 Telephone 571-272-9155 John.Dwyer1@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at http://tarr.uspto.gov/. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/teas/eTEASpageE.htm.

Print: May 1, 2012 77215242

DESIGN MARK

Serial Number

77215242

Status

REGISTERED

Word Mark

DIANABOL

Standard Character Mark

Yes

Registration Number

3378354

Date Registered

2008/02/05

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Wheat, Jared R. INDIVIDUAL UNITED STATES 6015-B Unity Drive Norcross GEORGIA 30071

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S: Dietary supplements, excluding anobolic steroids. First Use: 2002/03/04. First Use In Commerce: 2002/03/31.

Filing Date

2007/06/26

Examining Attorney

POWER, MARGARET

Attorney of Record

Joseph P. Schilleci, Jr.

DIANABOL

Print: May 1, 2012 85280036

DESIGN MARK

Serial Number

85280036

Status

RESPONSE AFTER NON-FINAL ACTION - ENTERED

Word Mark

D-ANABOL 25

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Dynamic Sports Nutrition, LLC LIMITED LIABILITY COMPANY TEXAS 1330 Post Oak Blvd., Ste. 2900 Houston TEXAS 77056

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements. First Use: 2005/10/01. First Use In Commerce: 2005/10/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "25" APART FROM THE MARK AS SHOWN.

Filing Date

2011/03/29

Examining Attorney

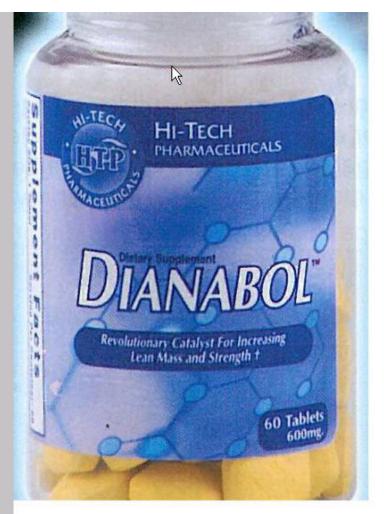
DWYER, JOHN

Attorney of Record

John S. Egbert

D-ANABOL 25

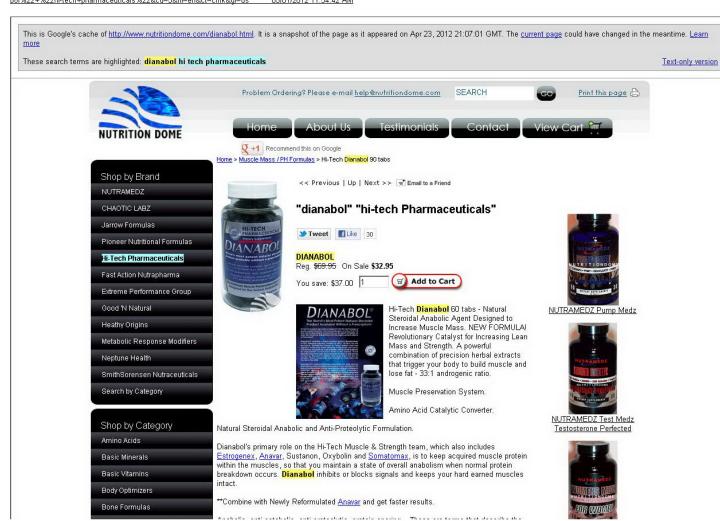
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Speech Tools

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Want to Live Longer? Get Your FREE Dr. K's Workshop "WHY YOU MIGHT BE AT RISK OF DYING PREMATURELY AND HOW TO PROLONG YOUR LIFE NATURALLY" when you sign up for Dr. Kalitenko's newsletter.







Anabolic, anti-catabolic, anti-proteolytic, protein-sparing.. These are terms that describe the state of protein affairs in muscle. The bodybuilding community likes to define anabolic compounds as those which increase amino acid shuttling into muscle and increase protein synthesis. Likewise, anti-catabolic, or antiproteolytic (the more specifically correct term) compounds are defined as those which decrease amino acid shuttling out of muscle (also called protein-sparing). Irrespective of whether amino acids are being gained within muscle due to an increase in the influx of amino acids and enhanced protein synthesis, or due to the conservation of amino acids already within muscle, or both, the resulting intramuscular environment is anabolic. This is a really good thing for bodybuilders.

Although most bodybuilding supplements really don't do jack, a few bodybuilding supplements may actually help increase the uptake of amino acids into muscle, and a few other supplements may actually help to conserve amino acids already within muscle. Even better yet, there are a very few supplements that contain formulations of ingredients that do boththey are anabolic and anti-proteolytic, which means even more muscle protein. One of those very few supplements is <code>Dianabol</code>® a Hi-Tech Muscle & Strength supplement that contains a whirtwind of both anabolic and anti-proteolytic compounds. This product is all about protein... getting it, saving it, and using it to build rock-hard muscle. The active compounds in <code>Dianabol</code> signal muscles to snatch up more amino acids from the blood and then use them to create muscle protein at a faster rate through increased protein synthesis. The compounds in <code>Dianabol</code>® also tell muscles to hang on to amino acids already within muscle by decreasing muscle-wasting activities within the muscle, creating a protein-sparing metabolism, and thus maintaining an anabolic state during times when normal protein breakdown occurs. In essence, <code>Dianabol</code>® helps keep hard-earned muscle intact.

DIANABOL: What was it about the anabolic steroid Dianobol that bodybuilders found so remarkable that it was called the King of Steroids? It was its ability to help build muscle and strength in a relatively short period of time.

The King has now returned and has been so aptly trademarked <code>Dianabol</code> because of its remarkable ability to increase muscle and strength through anti-proteolytic means, which science and real world evidence suggests may be more important to overall muscular growth than direct anabolic, protein synthesis activity. The new King of bodybuilding supplementation is no longer a drug. It is powerful combination of precision herbal extracts that present a multifaceted approach to building muscle and losing fat through an even wider array of metabolic pathways than its predecessor. And because these pathways are not hormonal, through mechanisms that yield permanent gains in muscle and strength.

Dianabol is the newest creation from the Research and Development team at <u>Hi-Tech</u>
Pharmaceuticals, Inc., and is one of five products in the Hi-Tech Muscle and Strength line of anabolic nutraceuticals, which also includes <u>Estrogenex</u>, Metanabol, Somatophen and <u>Anavar</u>.

While all five products act in synergy to create a highly anabolic and anti-proteolytic growth environment, <code>Dianabol</code> is the core protein-sparing driver, which means that Dianabol's primary role on the team is to keep acquired muscle protein within the muscles. Thus, <code>Dianabol</code> helps to maintain a state of overall anabolism during times when normal protein breakdown occurs, such as during periods of physical and mental stress, intense training, caloric restriction and when weight training is infrequent. In other words, when your body would normally be breaking down muscle protein to release amino acids for diversion to other areas of the body, <code>Dianabol</code> inhibits or blocks the breakdown signals and keeps your hard earned muscle intact.

With the assistance of Pharmatech, Ltd. (a Belizean-based research and development company), the active compounds in Belizean Man Vine were isolated. The active constituents are called phenylethanoid glycosides, which have amazing anti-catabolic, anti-inflammatory and recuperative properties. Dianabol contains a highly concentrated amount of these





NUTRAMEDZ Mens Medz



NUTRAMEDZ Joint Medz with Pain Support



NUTRAMEDZ Thermo Medz with Appetite and Mood



Hi-Tech OxyBolin 250

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phenylethanoid glycosides, yielding dramatic results.

In a study done by Pharmatech among three groups of male subjects engaged in a weight training program, the two groups that used Belizean Man Vine extract gained 7.8 lb and 6.3 lb, respectively, more muscle mass than the placebo group over an eight-week period. The benefits reported, which were universal to all test subjects, are increased muscle mass, improved recovery times and increased strength. What is of particular interest is that group that gained 6.3 more lb of muscle did so on a diet that consisted of 50% of the calories and protein than that of the group that gained 7.8 lb, clearly demonstrating the anti-proteolytic action of the extract. It is also likely that the phenylethanoid glycosides have an inhibitory effect on the inflammatory response from training and thus both increased recovery and enhanced nitric oxide production (from histamine inhibition) may be contributory factors to the acquired muscle gains.

Dianabol does not just stop with Belizean Man Vine in its formulation... to live up to its name and reputation there are many other mechanisms by which Dianabol works. Dianabol's other constituents also function as anabolic agents, thereby increasing protein synthesis and nitrogen retention. These constituents have adaptogenic properties, as well, allowing the body to adapt to increased workloads and combat fatigue. This leads to skeletal muscle growth and notable strength alsoincreases. The anti-catabolic/adaptogenic properties of Dianabol notable strength alsoincreases. The anti-catabolic/adaptogenic properties of Dianabol have an important "normalizing" effect on all bodily functions. This leads to improved sleep, physical and mental state and helps prevent overtraining. Dianabol further has additional normalizing actions as they relate to the synthesis of RNA during stress, which also allows the body to avoid catabolic states. This effect allows the body to significantly perform at a higher level and recover after strenuous workouts. Dianabol also works in conjunction with your body's own insulin mechanisms by stimulating the production of insulin (creating a temporary anabolic state), thereby decreasing protein breakdown (better utilization of protein), increasing storage of glycogen in the muscle cell and increasing free fatty acid oxidation. Dianabol also has been shown to significantly elevate insulin growth factor (IGF), a highly anabolic hormone produced in the liver and other tissues.

Dianabol Supplement Facts: Total – 575 mg (proprietary blend)

Proprietary Blend with Explotab® and Extend-Rx™ Technology: 575mg

[Belizian Man Vine extract 80% (as BMV80™)(root), tribulus terrestris (90% steroidal saponins)(fruit), 25R spirostan-5A-diol-6-one-3-one, dehydroeplandrosterone acetate, dehydroeplandrosterone deconate, phytosterol 90% extract (standardized for beta-sitosterol, campesterol, stigmasterol, brassicasterol), belizian wild yarn extract (as BWY 6015™), ribonucleic acid complex 3™ (ribosomal RNA, transfer RNA, messenger RNA), 7-keto-DHEA, 6,7 dihydroxybergamottin, naringin, vanadyl sulfate ethyl ester, smilagenin, dicyclopentanone]

Other Ingredients: Microcrystalline cellulose, dextrose, sodium starch glycolate, explotab®, hydroxy propylmethylcellulose, magnesium stearate, stearic acid, silica, fd&c blue #1, fd&c red #40.

Directions: Take one (1) tablet three times daily with meals. This is important as the strength of this product can cause nausea if consumed without eating.



Hi-Tech <mark>Dianabol</mark> 90 tabs DIANABOL

Reg. \$69.95 On Sale **\$32.95**



Hi-Tech Anavar



Hi-Tech Sustanon 250



INFINITE



Hi-Tech N.O. Overload 310



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HGH-PRO Pharmaceutical Grade (Raise IGF-1)

Related Products

ASN METHYLZINE (DMZ) | HGH-PRO Pharmaceutical Grade (raise 16F-1) | Jarrow Amino Recovery PeptoPro | Jarrow 7-Keto DHEA 100mg |
Annamik DMG-500 mg (N,N-Dimethylghvine) 60 chewable tabs | Methastadrol | Jarrow Creatine Caps 800 mg CreaPure | Jarrow Tribulus Complex
| Tri Methyl Xteme 3.15 Maximum Formula | TriMethyl XTREME | Arime STAGE 5 PCT COMBQ | Hi-Tech Dianabol 90 tabs | Hi-Tech Anavar| HiTech OxyBolin 250 | Hi-Tech Somatomax 20 serings | Hi-Tech Sustanon 250 | Hi-Tech Etocapens 20 tab [insite Energy Boost | INFINITE T2 |
MRM Driven 100% All Natural | MRM RELOAD All NaturalINFINITE T2 / MEGAPLEXX COMBO

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Please note that manufacturers may make changes to product formulations from time to time.

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- Gynecomastia

- How To Come Off Steroids



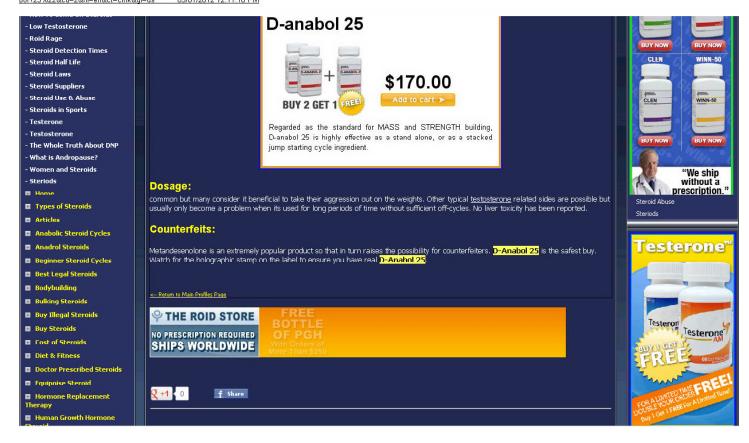
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D-ANABOL

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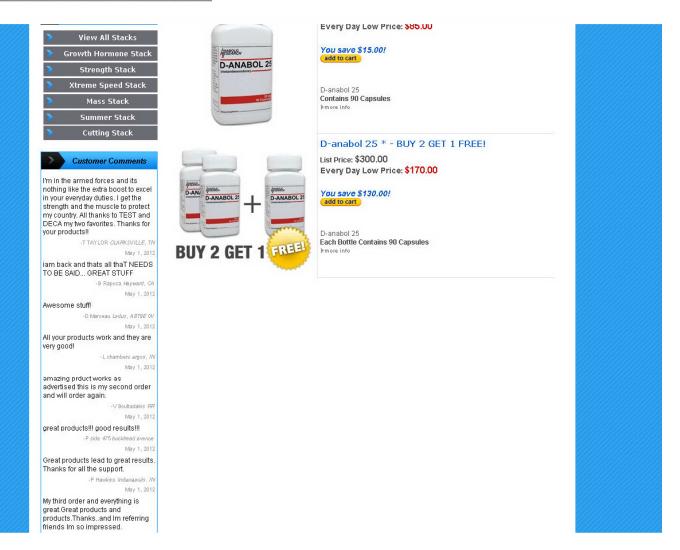
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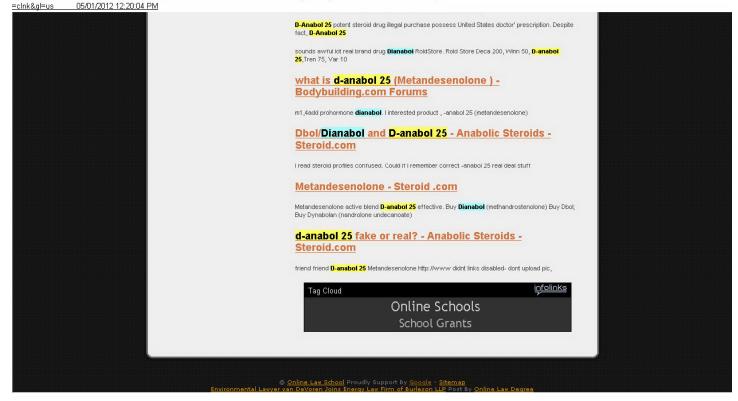
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